IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11349 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ISHWARBHAI MADHABHAI PATEL

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Appearance:

1. Special Civil Application No. 11349 of 2002

MR HARDIK C RAWAL for Petitioner

MR PRABHAKAR UPADYAY for Respondent

MR DASHRATH N PATEL for Respondent

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CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/02/2003

ORAL JUDGEMENT

RULE. Mr.Prabhakar Upadhyay, the learned advocate waives service of rule. With the consent of the

learned advocates the matter is taken up for final disposal.

2. The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") being aggrieved of an order dated 6.9.2002 passed by the Conciliation Officer & Deputy Labour Commissioner, Ahmedabad below Approval Application No.214 of 2002 under section 33(2)(b) of the Industrial Disputes Act, 1947. The Conciliation Officer was pleased to refuse to accord approval to the order passed by the petitioner corporation bearing no.DC/ HMT/ TR/ D/ 258/ 01/ 130 dated 16.5.2002. The facts of the case are that the respondent workman who was serving as Conductor with the petitioner corporation misbehaved with a passenger on 16.3.2001 while on duty on the route of Idar-Bombay. As the facts are on record one passenger, Chandra Vijaysinh L. Jetavat had reservation of seats no.11 & 12 by ticket no.9821161. He was asked to vacate those seats for no valid reasons and the respondent, conductor occupied those seats. Not only that he misbehaved with passengers and did not return remainder amount. When the passengers told about filing of complaint the respondent conductor further misbehaved and used language not befitting to a public servant. The trend of the day is that the concept of public service is totally lost. One of the contributing factor appears to be over protection available to workmen. Persons in public service maintain an impression that they have a monopoly of misbehaving with the public at large. In the present case also the poor passenger had to vacate the seats. The passenger sent a complaint to the Divisional Controller, a copy of which is at Annexure R1, page 45. From the reading of the complaint it is clear that there is nothing which can raise a cause for not believing it. It is a natural narration of the incident which is alleged to have taken place on 16.3.2001, the day of journey by the complainant. The default card of the present respondent workman-- conductor which is annexed to this petition at page 31, Annexure 'D' consists of as many as 34 defaults, of which 10 defaults pertain to 'misbehaviour' not only with ordinary passengers but also with the officers of the checking party. In one incident even a Policeman was subjected to ill treatment by the respondent workman. This speaks volumes about the conduct of the respondent. Be that as it may. When the matter is before the Court, it is to be examined in accordance with law. The Conciliation Officer has taken a supertechnical view of the matter and has held that the order passed by the petitioner corporation suffers from the following defects:

(i) That the respondent workman is subjected to dual punishment for one default,

(ii) That the order is passed without following the Standing Orders, Circulars and other relevant provisions.

He referred to circulars of the corporation bearing no.821 dated 4.7.1980, no.1310 dated 18.1.1991 and no.1029 of the year 1995, of which no details as to what are the provisions, and what are the violations are discussed. The officer has also recorded that no independent witness is examined in the inquiry.

(iii) That the Inquiry Officer has not made any appointment of Presenting Officer.

Despite the fact that various decisions were cited before the Conciliation Officer he by making a very cursory reference to the authorities passed the order under challenge. The Conciliation Officer ought to have appreciated the fact that non grant of approval will result into reinstatement of the employee who does not deserve reinstatement. The reinstatement will result into avoidable expenditure on the public exchequer.

3. Sooner the better concept of public service is established in all public corporations. The public servants must be conveyed in clear terms that they are public servants, any misbehaviour on their part cannot be tolerated by higher officers. Making things supertechnical will give wrong signals to the society as a whole. People are losing confidence in the Judiciary only because such orders are passed by the quasi judicial authorities like the present Conciliation Officer.

4. Mr.Upadhyay, the learned advocate appearing for the respondent workman vehemently contended that there is violation of clauses (9) and (20) of the Discipline & Appeal Procedure. Both these clauses are reproduced at page 43 of this proceedings. Clause (9) reads as under:

"(9) The appellate authority may suo motu call for the inquiry papers and review the decision in any case as it may deem fit."

A plain reading of clause (9) makes it clear that it is only an empowering provision to the appellate authority, in cases where an appeal is filed, the appellate

authority may call for inquiry papers of its own (suo motu) and review the decision, in case, if deemed fit.

So far as clause (20) is concerned, the same is reproduced for ready reference:

> "(20) The appellate authority appointed by the corporation for hearing appeals and reviewing cases are those shown in Schedule-C. Any officer higher than the prescribed appellate authority has inherent powers to call any case papers and review the decision or hear the appeal or direct any other authority to hear the appeal."

The clause is in two parts, one prescribes the appellate authority as set out in schedule 'C', the latter part says that, "..... Any officer higher than the prescribed appellate authority has inherent powers to call for the papers of any case and review the decision or hear the appeal or direct any other authority to hear the appeal." Thus, overall supervision is provided but that does not mean that the power of appellate authority to call for the papers and review the decision suo motu is taken away. The contention of Mr.Upadhyay that, 'there is a violation of clauses (9) & (20)' is without any sustenance. Hence it is rejected. Mr.Upadhyay, the learned advocate next contended that no reason is stated in the show cause notice for review. The show cause notice for review is dated 16.4.2002 and it contains that, 'the punishment imposed on you is found to be lesser in proportion to the gravity of the offence committed and therefore, it is decided to review the case against you'. The Court is of the opinion that the Reviewing Authority could not have narrated the reason any better than what it is done. In so many words, it is stated in the show cause notice that the punishment imposed is found to be lesser in proportion to the gravity of offence. The respondent workman ought to have satisfied the reviewing authority that his misconduct did not warrant any other punishment than what is imposed. The submission of Mr.Upadhyay is without any substance or merit. Hence it is rejected.

5. Mr.Upadhyay submitted that non appointment of Presenting Officer by the Inquiry Officer has vitiated the inquiry proceedings. For that purpose he relied upon a judgement of Division Bench of this Court (Coram: J.M. Panchal & A.N. Divecha, JJ.) in Special Civil Application No.3456 of 1980 dated 19.2.1992. Mr.Upadhyay, the learned advocate could not satisfy the Court on the point that the said decision will have

application to the facts of the present case inasmuch as in the present case it is clear from the order passed in Default Case No.258 of 2001, a copy of which is at Annexure 'B' to this petition wherein it is nowhere recorded that the conductor was ever cross examined by the Inquiry Officer. The conductor's self defence is narrated in the order at Annexure 'B' (page 25, internal page 5) from which this fact is clear. In view of that when there is no cross examination by the Inquiry Officer there is no question of the Inquiry Officer discharging dual role of a prosecutor and a Judge. In the opinion of the Court reliance placed on the said judgement is totally misconceived.

6. Mr.Upadhyay, the learned advocate also relied upon a judgement of Bombay High Court in the matter between Maharashtra State Road Transport Corporation v. R.D. Toplewar and another, reported in 1987 LAB IC 789. Mr.Upadhyay submitted that as is mentioned in para 13 onwards, it should be held that there being violation of clause (9), the inquiry was vitiated against the present respondent workman. As observed hereinabove there being no violation of clause (9), the judgement has no application to the facts of the present case.

7. Taking into consideration the facts of the case, the order of the Conciliation Officer is required to be quashed and set aside and the same is hereby quashed and set aside. Approval Application No.214 of 2002 is hereby granted.

8. The petition is allowed. Rule is made absolute. Order of cost as above.

(Ravi R. Tripathi, J.)

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